92-1223

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF NAVY, NAVY CBC EXCHANGE, CONSTRUCTION BATTALLION CENTER, GULFPORT, MISSISSIPPI, AND THE U.S. DEPARTMENT OF DEFENSE, ARMY AND AIR FORCE EXCHANGE, DALLAS, TEXAS, PETITIONERS

v.

FEDERAL LABOR RELATIONS AUTHORITY AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Whether the Privacy Act of 1974 protects the home addresses of federal employees from disclosure.

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U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF NAVY, NAVY CBC EXCHANGE, CONSTRUCTION BATTALLION CENTER, GULFPORT, MISSISSIPPI, AND THE U.S. DEPARTMENT OF DEFENSE, ARMY AND AIR FORCE EXCHANGE, DALLAS, TEXAS, PETITIONERS

v.

FEDERAL LABOR RELATIONS AUTHORITY AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the U.S. Department of Defense, U.S. Department of Navy, Navy CBC Exchange, Construction Battallion Center, Gulfport, Mississippi, and the U.S. Department of Defense, Army and Air Force Exchange, Dallas, Texas, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-34a) is reported at 975 F.2d 1105. The opinions of the Federal Labor Relations Authority (App., *infra*, 37a-42a and 52a-57a) are reported at 37 F.L.R.A. 652 and 37 F.L.R.A. 930.

JURISDICTION

The judgment of the court of appeals was entered on October 9, 1992. A petition for rehearing was denied on December 7, 1992. Pet. App. 35a-36a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

1. The pertinent provisions of the Freedom of Information Act, 5 U.S.C. 552, state:

> (b) This section does not apply to matters that are—
>
> • • • • •
>
> (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
>
> (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information • • • (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]

2. The Privacy Act of 1974, 5 U.S.C. 552a(b), states, in pertinent part:

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—
>
> • • • • •
>
> (2) required under section 552 of this title [FOIA];
>
> (3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section[.]

3. The Federal Service Labor-Management Relations Statute, 5 U.S.C. 7114, provides, in pertinent part:

> (b) the duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—
>
> • • • • •
>
> (4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—
>
> • • • • •
>
> (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining[.]

STATEMENT

1. This case arises out of requests by two unions for, among other things, the home addresses of federal employees in the bargaining units represented by the unions. Both cases happen to involve employ-

ees of military exchanges.[1] In each case, the agency provided the names and work stations of members of the bargaining unit, but not their home addresses. C.A. App. 58, 60, 113. In declining to provide the home addresses, the agencies relied on the Privacy Act of 1974, which states that, in general, "[n]o agency shall disclose any record * * * except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." 5 U.S.C. 552a(b). In both cases, the Federal Labor Relations Authority (FLRA) concluded that the agency had committed an unfair labor practice. App., *infra*, 37a-42a, 52a-57a.

2. a. The court of appeals enforced the FLRA's orders compelling the disclosure of the home addresses of the members of the bargaining units. The court recognized that "[i]n general, the Privacy Act, 5 U.S.C. § 552a, prohibits the disclosure of personal information about federal employees without their consent." App., *infra*, 10a. However, the court added, an exception to the Privacy Act, 5 U.S.C. 552(b)(2), authorizes the disclosure of information contained in agency records if disclosure "would be * * * required under section 552 of this title," the Freedom of Information Act (FOIA). FOIA, in turn, generally requires the disclosure of agency documents, although FOIA Exemption 6 protects from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). The court accordingly turned to whether disclosure of the employees' home addresses would constitute a "clearly unwarranted invasion of personal privacy" within the meaning of FOIA Exemption 6.

[1] One request was made by Local 1657 of the United Food and Commercial Workers Union, which represents employees at the Navy Exchange in Gulfport, Mississippi. The other request was made by Local 1345 of the American Federation of Government Employees, which represents employees of the Army and Air Force Exchange Service, which is based in Dallas. App., *infra*, 2a-3a.

Prior to this Court's decision in *United States Dep't of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the court of appeals emphasized, a number of courts had concluded that unions representing federal employees were entitled to obtain the home addresses of bargaining unit members. Those courts weighed the public interest in promoting collective bargaining by federal employees against the employees' interest in protecting their home addresses from disclosure, and held that disclosure was warranted. App., *infra*, 9a-16a. In *Reporters Committee*, however, which involved a request by a reporter for an FBI "rap sheet," the Court stressed that FOIA "focuses on the citizens' right to be informed about 'what their government is up to.'" 489 U.S. at 773. In that case, the Court held that disclosure was not warranted because "the requester does not intend to discover anything about the conduct of the agency that has possession of the requested records" and a response "would not shed any light on the conduct of any Government agency or official." *Ibid.* Following *Reporters Committee*, as the court of appeals in this case acknowledged, App., *infra*, 15a-16a n.4, a number of circuits held that FOIA does not provide for the disclosure of the home addresses of federal em-

ployees, since home addresses do not disclose what the government is "up to." [2]

But the court of appeals concluded that those circuits "have read too much into *Reporters Committee*," App., *infra*, 18a, and agreed with those courts that have held that federal agencies must disclose employees' home addresses.[3] The court suggested two bases on which *Reporters Committee* may be distinguished. First, *Reporters Committee* involved FOIA Exemption 7(C) rather than FOIA Exemption 6. Exemption 7(C) protects records compiled for law enforcement purposes from disclosure, "but only to the extent that the production of such law enforcement records * * * could reasonably be expected to

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[2] The court cited *FLRA* v. *Department of the Navy, Navy Exchange*, 975 F.2d 348 (7th Cir. 1992); *FLRA* v. *Department of the Navy, Navy Resale Activity*, 963 F.2d 124 (6th Cir. 1992); *FLRA* v. *Department of Veterans Affairs*, 958 F.2d 503 (2d Cir. 1992); *FLRA* v. *United States Dep't of the Navy, Naval Communications Unit*, 941 F.2d 49 (1st Cir. 1991); and *FLRA* v. *U.S. Dep't of the Treasury*, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied, 493 U.S. 1055 (1990). Since the decision in this case, the Eleventh Circuit also has rejected the FLRA's position. *FLRA* v. *U.S. Dep't of Defense*, 977 F.2d 545 (1992).

[3] The court noted (App., *infra*, 16a-17a n.4) that panels in the Ninth Circuit and the Fourth Circuit had granted enforcement of FLRA orders requiring the disclosure of home addresses. *FLRA* v. *United States Dep't of the Navy, Navy Resale & Support Servs. Office*, 958 F.2d 1490 (9th Cir. 1992), petition for reh'g pending: *FLRA* v. *United States Dep't of Commerce, NOAA*, 954 F.2d 994 (4th Cir. 1992), vacated and reh'g granted (Apr. 22, 1992). The court also noted that the en banc Third Circuit had upheld an FLRA disclosure order. *FLRA* v. *U.S. Dep't of the Navy, Navy Ships Parts Control Center*, 966 F.2d 747 (1992). However, the court's holding in that case was not based on FOIA Exemption 6. See note 6, *infra*.

constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C). Exemption 6 differs from Exemption 7(C), the court of appeals noted, in two ways: while "Exemption 6 mandates that the invasion of privacy be '*clearly* unwarranted,' Exemption 7(C) requires that the invasion of privacy be merely 'unwarranted,'" and "while Exemption 6 applies to disclosures which 'would constitute' an invasion of privacy, Exemption 7(C) pertains to disclosures which 'could reasonably be expected to constitute' such an invasion." App., *infra*, 19a-20a. The court did not elaborate on the significance of those differences.

Second, the court of appeals stated, this case differs from *Reporters Committee* since "the unions' disclosure requests in this case do not arise under the FOIA." App., *infra*, 20a. Rather, the court continued, "their requests originate from within the FLRS [the Federal Service Labor-Management Relations Statute] and its Congressionally endorsed framework for protecting and promoting collective bargaining." *Ibid.* The court concluded that "*Reporters' Committee* is limited to the situation that arises when disclosure is sought under the FOIA alone." *Id.* at 23a. Once the interest in promoting collective bargaining is considered, the court held, "disclosure of the employees' names and addresses would not constitute a clearly unwarranted invasion of privacy, and is not prohibited by the Privacy Act." *Id.* at 26a. Thus, the court enforced the FLRA's order even though it "acknowledged that if one applies the restrictions announced in *Reporters' Committee*—confining cognizable interests in disclosure to those that open agency action to the light of public scrutiny—then disclosure clearly would be prohibited." *Id.* at 19a.

b. Judge Emilio Garza dissented. Although the FLRS provides that federal agencies must furnish unions with information "which is reasonably available and necessary for * * * collective bargaining," he noted, it provides that they may do so only "to the extent not prohibited by law." 5 U.S.C. 7114 (b)(4)(B). Since all agree that the Privacy Act would prohibit the disclosure of employees' home addresses unless disclosure is mandated by FOIA, Judge Garza continued, the question in this case turns on whether FOIA Exemption 6 requires disclosure. Contrary to the majority, Judge Garza saw no basis for weighing collective bargaining considerations in the balance under Exemption 6, since those considerations have nothing to do with what the government is "up to." App., *infra*, 30a-34a.

Also contrary to the majority, Judge Garza found no reason to distinguish *Reporters' Committee* on the ground that Exemption 6 differs in some respects from Exemption 7(C). "The difference between Exemption 6 and 7(C) goes *only* to the degree of personal privacy needed to outweigh the public interest," he explained, while "the public interest factor remains the same under both exemptions." App., *infra*, 30a. Since the unions' request in this case would not disclose anything about what the government is "up to" but would impinge on employees' privacy interests, Judge Garza would have denied the FLRA's applications for enforcement of its orders.

REASONS FOR GRANTING THE PETITION

This case presents a recurring issue on which there is an acknowledged conflict in the circuits, and the court of appeals in this case erroneously held that the

privacy interests of federal employees must be infringed by the release of their home addresses. Review by this Court is therefore warranted.

1. The Privacy Act bars the release of employees' home addresses. There is no dispute that, in the absence of an applicable exception, disclosure would violate the Privacy Act's requirement that "[n]o agency shall disclose any record * * * except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." 5 U.S.C. 552a(b). No exception to the Privacy Act authorizes courts to consider the interest in collective bargaining embodied in the FLRS. In addition, the FLRS expressly provides that federal agencies are to furnish information to unions only "to the extent not prohibited by law." 5 U.S.C. 7114(b)(4). Since the Privacy Act is a "law" that generally prohibits the disclosure of personal information by federal agencies and contains no exception relating to collective bargaining activities, the court of appeals erred by distinguishing *Reporters Committee*, and basing its decision on the fact that the requests in this case were made by unions.[4]

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[4] In our view, the court of appeals also overstated the extent to which collective bargaining would be facilitated by disclosure of the employees' home addresses. The names and work stations of employees in the bargaining units were disclosed to the unions (see C.A. App. 58, 60, 113), and the additional disclosure of the employees' home addresses would facilitate collective bargaining only marginally, if at all. Moreover, the unions could have asked the employes to provide their home addresses. Had they done so, of course, the unions would have the home addresses only of those employees who wanted to provide their home addresses to the union. But the FLRA generally requires the disclosure of the home addresses

Nor does the fact that this case involves FOIA Exemption 6 rather than FOIA Exemption 7(C) provide a basis for distinguishing *Reporters Committee*. As Judge Garza explained, a weightier privacy interest may be required in some cases to protect information from disclosure under Exemption 6 than under Exemption 7(C). App., *infra*, 30a. But there is no dispute that a privacy interest is at stake in this case—the important interest in protecting the privacy of home and hearth. See *Rowan* v. *Post Office*, 397 U.S. 728, 737 (1970) ("[t]he ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality"). And there is no dispute that federal employees' interest in protecting the privacy of their home outweighs the interest in disclosure unless the collective bargaining interest embodied in the FLRS is weighed in the balance, since the employees' home addresses disclose nothing about what the government is "up to." As the court of appeals acknowledged, "if one applies the restrictions announced in *Reporters' Committee*—confining cognizable interests in disclosure to those that open agency action to the light of public scrutiny—then disclosure clearly would be prohibited." App., *infra*, 19a. See *U.S. Dep't of State* v. *Ray*, 112 S. Ct. 541, 548 (1991), quoting *Department of Air Force* v. *Rose*, 425 U.S. 352, 372 (1976) (Exemp-

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of all employees in the bargaining unit, even employees who have asked that their home addresses be kept confidential. See *Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 37 F.L.R.A. 514 (1990); *Farmers Home Administration Fin. Office*, 23 F.L.R.A. 788 (1986); App., *infra*, 46a-47a; p. 13, *infra*.

tion 6 "requires the Court to balance 'the individual's right of privacy' against the basic policy of opening 'agency action to the light of public scrutiny' ").

In short, the Privacy Act protects federal employees' home addresses from disclosure unless FOIA requires their release. FOIA requires the release of information only when it discloses what the government is "up to," not when disclosure promotes some other interest. The court of appeals therefore erred by ordering the release of the employees' home addresses in this case.

2. Six circuits have correctly held that employees' home addresses are protected from disclosure by the Privacy Act. *FLRA* v. *U.S. Dep't of Defense*, 977 F.2d 545 (11th Cir. 1992); *FLRA* v. *Department of the Navy, Navy Exchange*, 975 F.2d 348 (7th Cir. 1992); *FLRA* v. *Department of the Navy, Naval Resale Activity*, 963 F.2d 124 (6th Cir. 1992); *FLRA* v. *Department of Veterans Affairs*, 958 F.2d 503 (2d Cir. 1992); *FLRA* v. *U.S. Dep't of the Navy, Naval Communications Unit*, 941 F.2d 49 (1st Cir. 1991); *FLRA* v. *U.S. Dep't of the Treasury*, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied, 493 U.S. 1055 (1990). The court of appeals in this case acknowledged that its decision cannot be reconciled with the decisions of those other circuits. App., *infra*, 15a-16a & n.4. Two other courts have agreed with the court of appeals in this case, although one of those decisions was vacated. *FLRA* v. *U.S. Dep't of the Navy, Navy Resale & Support Servs. Office*, 958 F.2d 1490 (9th Cir. 1992), petition for reh'g pending; *FLRA* v. *Department of Commerce, NOAA*, 954 F.2d 994 (4th Cir. 1992), vacated and reh'g granted (Apr.

22, 1992).[5] The issue on which the courts are split is squarely presented by this case.[6]

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[5] Because a rehearing petition has been granted or is pending in those circuits, we have advised the Fourth and Ninth Circuits that the Solicitor General has authorized the filing of a petition for a writ of certiorari in this case. The Fifth Circuit's denial of rehearing en banc makes clear that the question presented will not be resolved unanimously by the courts of appeals.

[6] In *FLRA* v. *U.S. Dep't of the Navy, Navy Ships Parts Control Center*, 966 F.2d 747 (1992), the en banc Third Circuit upheld the FLRA's position on the basis of the "routine use" exception to the Privacy Act, 5 U.S.C. 552a(b)(3), a provision which authorizes disclosure "for a purpose which is compatible with the purpose for which it was collected," 5 U.S.C. 552a(a)(7), and in accordance with a "routine use" regulation, 5 U.S.C. 552a(e)(4)(D). A majority of the en banc court (seven of twelve) held that release was authorized by a "routine use" regulation promulgated by the Office of Personnel Management (OPM) (see 49 Fed. Reg. 36,949, 36,956 (1984)), even though OPM had interpreted its routine use regulation to bar the release of home addresses unless unions have no other reasonable method of reaching bargaining unit members. The en banc court said that "until the OPM publishes its interpretation in a manner sufficient to place the public on notice of both the existence and content of that interpretation, we will not defer to the OPM's interpretation." 966 F.2d at 762. In response, OPM in September 1992 published its interpretation of its routine use regulation in Federal Personnel Manual Letter 711-164. The FLRA has since recognized that "FPM Letter 711-164 governs interpretation" of the routine use regulation. *U.S. Dep't of the Treasury, Bureau of Alcohol, Tobacco and Firearms*, 46 F.L.R.A. No. 22, slip op. 10 (Oct. 23, 1992). Accordingly, there is no longer a basis for the argument that disclosure of home addresses is generally permissible under OPM's "routine use" regulation, and the only question bearing on the controversy is whether the Privacy Act authorizes disclosure of home addresses under FOIA. (Six of the twelve members of the en banc Third Circuit—that is, less than a majority—agreed with the FLRA's position with respect to FOIA Exemption 6, while five members of the court disagreed and one did not reach the issue.)

The question presented is plainly a recurring issue. It is also an issue of considerable importance to federal employees, who may have specific concerns about releasing their home addresses to unions ranging from the inconvenience of receiving unsolicited mail at home to the possibility of harassment by the union at home. For example, in *Department of the Navy, U.S. Naval Ordnance Station*, 33 F.L.R.A. 3, 5 (1988), an affidavit filed before the FLRA included a statement by an employee that he wanted his home address to be kept private because he had been threatened at home by a union member; the FLRA nevertheless ordered the release of the home addresses of all members of the bargaining unit. Furthermore, it is clear that *many* federal employees do not want their home addresses disclosed to unions. In *Veterans Administration, Riverside National Cemetery*, 33 F.L.R.A. 316, 317 (1988), for example, 22 of the 34 members of the bargaining unit asked the agency to keep their home addresses confidential; the FLRA ordered their release to the union anyway.

Finally, aside from the more than 60 home address cases decided by the FLRA, the question presented affects other important issues. For example, the FLRA has ordered the release of unsanitized employee disciplinary files and performance ratings, despite the Privacy Act, on the ground that release is required so that unions may fulfill their responsibilities under the FLRS. *U.S. Dep't of Labor*, 39 F.L.R.A. 531 (1991), remanded on other grounds, No. 91-1174 (D.C. Cir. order of Jan. 7, 1992) (unredacted suspension records); *U.S. Dep't of Health*

and Human Services, Social Security Administration and Social Security Administration Field Operations, 43 F.L.R.A. 164 (1991), rev'd, No. 92-1012 (D.C. Cir. Dec. 10, 1992) (unredacted performance appraisals); see also *U.S. Department of Energy*, 41 F.L.R.A. 1241, 1252-1253 (1991), appeal pending, No. 91-1514 (D.C. Cir.) (names of employees suspected of illegal drug use). But under *Reporters Committee*, such records are properly subject to disclosure only if what they reveal about what the government is "up to" outweighs the privacy interests sacrificed by disclosure. In short, in addition to ordering federal agencies to disclose employees' home addresses to unions, the FLRA has used the approach approved by the court of appeals in this case to order the disclosure of a broad array of personal information.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JANUARY 1993

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 90-4722

FEDERAL LABOR RELATIONS AUTHORITY,
PETITIONER-CROSS-RESPONDENT

versus

UNITED STATES DEPARTMENT OF DEFENSE, UNITED STATES DEPARTMENT OF THE NAVY, WASHINGTON, D.C., AND NAVY CBC EXCHANGE, CONSTRUCTION BATTALION CENTER, GULFPORT, MISSISSIPPI, RESPONDENTS-CROSS-PETITIONERS

No. 90-4775

FEDERAL LABOR RELATIONS AUTHORITY,
PETITIONER-CROSS-RESPONDENT

versus

UNITED STATES DEPARTMENT OF DEFENSE, ARMY AND AIR FORCE EXCHANGE, DALLAS, TEXAS,
RESPONDENT-CROSS-PETITIONER

Applications for Enforcement and Cross-Petitions
for Review of Orders of the
Federal Labor Relations Authority

[Filed October 9, 1992]

Before KING, JOHNSON, and EMILIO M. GARZA, Circuit Judges.

JOHNSON, Circuit Judge:

In these two cases two labor organizations who represent federal employees requested that the federal agencies disclose to the unions the names and home addresses of all of the employees in the relevant bargaining units. The employer agencies refused, and the unions filed unfair labor practice charges with the Federal Labor Relations Authority (FLRA). The FLRA ordered the employers to disclose the names and addresses, and has applied to this Court for enforcement of its orders. The federal agency employers have petitioned for review of those orders.

I. Facts and Procedural History

The facts of these two cases are virtually identical. The United Food and Commercial Workers Union, Local 1657, represents a bargaining unit composed of all regular full-time and part-time employees, and all intermittent employees of the Navy Exchange in Gulfport, Mississippi. In August 1988 the union requested that the Navy Exchange disclose to it the names and home addresses of all of the employees in its bargaining unit. The Navy Exchange refused the

union's request. The union responded by filing an unfair labor practice charge with the FLRA. The FLRA ruled in favor of the union, and ordered the Navy Exchange to cease and desist from refusing to furnish the names and home addresses of all employees in the bargaining unit the union represents. In case No. 90-4722 the FLRA and the Navy Exchange seek enforcement and review of that order.

The American Federation of Government Employees, Local 1345, represents a consolidated, worldwide bargaining unit composed of all regular full-time and part-time employees, and all intermittent employees of the Army and Air Force Exchange Service, which is headquartered in Dallas, Texas, and operates a facility at Lowry Air Force Base in Colorado. In October 1988 the union requested that the Exchange disclose to it the names and home addresses of all of bargaining unit employees working at the Post Exchange at Lowry AFB. The Exchange denied the request, and the union filed an unfair labor practice charge with the FLRA. The FLRA ordered the Exchange to disclose the names and addresses. In No. 90-4775 the FLRA and the Exchange seek enforcement and review of the FLRA's order.

II. Discussion

Because the disputes in these cases arise out of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 *et seq.*, it is helpful to begin with a review of that statute and certain of the duties and obligations it places on labor organizations and federal employers.

A. *The Federal Service Labor-Management Relations Statute*

In adopting the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 *et seq.*, (the "FLRS"), Congress observed that

> experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment.

5 U.S.C. § 7101(a)(1). "Therefore," the Congress declared, "labor organizations and collective bargaining in the civil service are in the public interest."

To facilitate collective bargaining in the public sector, the FLRS provides that a labor organization may serve as the exclusive bargaining representative of a group of public employees as long as it fulfills certain duties. In particular, the FLRS provides that "[a]n exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." 5 U.S.C. § 7114(a)(1). That is, the labor organization must represent the interests not only of its dues-paying members, but also the interests of those employees in the unit who choose not to join the union. Thus, the requests by the unions in this case for the names and addresses of employees in the relevant bargaining units were requests designed to allow the union to contact not its own members, but rather the other employees in the units, so that the unions could determine what issues were of concern to those employees.

The FLRS also imposes obligations on the employer. For instance, in order to facilitate the bargaining process, federal employers are required

> to furnish to the exclusive representative involved, or its authorized representative, upon request and to the extent not prohibited by law, data which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

5 U.S.C. § 7114(b)(4)(B).

The FLRA has taken the position that the names and addresses of employees in the bargaining unit is data which is "reasonably available and necessary" to the process of collective bargaining. The FLRA first took this position in its decision in *Farmers Home Administration Finance Office v. American Federation of Government Employees, Local 3354*, 23 FLRA 788 (1986) ("*Farmers Home Administration*"), when it observed that

> [s]ection 7114(a)(1) of the [FLRS] provides that an exclusive representative is responsible for representing the "interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." Under this provision, a union's statutory responsibilities extend to all bargaining unit members. It is obvious that a union must be

> able to identify and communicate with those bargaining unit members if it is to adequately represent them.

Id. at 796. The FLRA thus concluded that disclosure of the names and addresses was necessary because it would "enable the Union to communicate effectively and efficiently, through direct mailings to individual employees." *Id.* Moreover, the FLRA held, the existence of alternative means of communication—such as desk drops, direct distributions, meetings, bulletin boards, and direct personal contacts—"is insufficient to justify a refusal to release the [names and addresses]." *Id.* This is so

> because the communication between unit employees and their exclusive representative which would be facilitated by release of names and home addresses . . . is fundamentally different from other communication through alternative means which are controlled in whole or in part by the [employer] agency. When using direct mailings, the content, timing, and frequency of the communication is completely within the discretion of the union and there is no possibility of agency interference in the distribution of the message. Further, direct mailings reach unit employees in circumstances where those employees may consider the union's communication without regard to the time constraints inherent in their work environments, and in which any restraint the employee may feel as a result of the presence of agency management in the workplace is not present.

Id. at 796-97. The FLRA has recently reaffirmed its position in *United States Dep't of the Navy, Portsmouth Naval Shipyard v. International Federation of Professional & Technical Engineers, Local 4*, 37 FLRA 515, 523 (1990) ("*Portsmouth*"), and its orders in the two cases before this Court were based on the decisions in *Farmers Home Administration* and *Portsmouth*.

The FLRA's determination that the names and addresses are necessary for full and proper collective bargaining has been uniformly upheld in the federal courts of appeals. Initially, because the FLRA's position is one interpreting its own enabling statute, its interpretation cannot be upset by the federal courts as long as it is a "reasonable and defensible construction" of the statute. *Bureau of Alcohol, Tobacco, and Firearms v. FLRA*, 464 U.S. 89, 97, 104 S.Ct. 439 (1983). That is, the FLRA's interpretation of the FLRS must be "given controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute. . . . [A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44, 104 S. Ct. 2778, 2782 (1984). *See also Department of Justice v. FLRA*, 939 F.2d 1170, 1173 (5th Cir. 1991) (FLRA is entitled to special deference when it exercises its special function of applying the general provisions of the FLRS to the complexities of federal labor relations).

There can be little question that the FLRA's position is a reasonable one. Every court of appeals that has reviewed the FLRA's determination that employees' names and address are necessary has found that to be a reasonable construction of the statute, and has

upheld the FLRA's position. Most recently, the Ninth Circuit has ruled that it was not unreasonable for the FLRA to conclude that the employees' names and home addresses "are necessary so that the union's direct-mail literature can reach employees free of the mediation of the employer-controlled workplace." *FLRA v. United States Dep't of the Navy, Navy Resale & Services Support Office*, 958 F.2d 1490, 1494 (9th Cir. 1992). Similarly, the Second Circuit has recently held that "alternatives to [the] direct communication afforded by mailings to all unit members —such as workplace visits or the use of bulletin boards —are not such effective alternatives as to make the FLRA's insistence on [home] mailings an arbitrary or capricious position." *FLRA v. United States Dep't of Veterans Affairs, Veterans Affairs Medical Center*, 958 F.2d 503, 507-08 (2d Cir. 1992). While the D.C. Circuit also cited the advantages of home mailings over alternative means of communication, that Court further noted that the FLRA's position "corresponds to that of private sector labor relations law." *FLRA v. United States Dep't of Treasury, Financial Management Service*, 884 F.2d 1446, 1449 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1055 (1990). Accordingly, the D.C. Circuit held the FLRA's interpretation was reasonable and should not be disturbed. *Id.*

At least three other circuits have also embraced the FLRA's position. *See United States Dep't of the Navy, Philadelphia Naval Shipyard v. FLRA*, 840 F.2d 1131, 1137-39 (3d Cir.), *cert denied*, 109 S. Ct. 632 (1988) ("Because a union must have the information necessary to fulfill its statutory responsibility to represent all employees in the unit, we conclude that the FLRA did not err in holding that the

requested information is necessary . . ."); [1] *United States Dep't of Agriculture v. FLRA*, 836 F.2d 1139, 1142 (8th Cir. 1988), *vacated and remanded*, 109 S. Ct. 831 (1989) (FLRA's position is not arbitrary or capricious); *United States Dep't of Health and Human Servs., Social Security Administration v. FLRA*, 833 F.2d 1129, 1131-34 (4th Cir. 1987) ("Communication between the Union and bargining unit employees appears to be as important to the performance of the Union's representational duties in the interim between negotiations as it is during negotiations[, and] . . . the Union cannot discharge its [statutory] obligation unless it is able to communicate with those in whose behalf it acts."). Indeed, in the face of this seamless expanse of authority, the federal agencies involved in this case do not contest the FLRA's position. They expressly acknowledge that the weight of authority supports the FLRA's view, and thus no longer dispute that the names and addresses of their employees are necessary to full and proper collective bargaining.

B. *The Previous Consensus that Employees' Names and Addresses Must be Disclosed*

Given that the parties, the FLRA, and the courts uniformly agree that the employees' names and home addresses are necesssary to the full and proper con-

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[1] The Third Circuit has recently reaffirmed this conclusion. In *FLRA v. United States Dep't of the Navy, Navy Ships Parts Control Center*, —— F.2d —— (3d Cir. 1992) (en banc), our colleagues on that Court, sitting en banc, again ruled that "the FLRA's interpretation of what is necessary does constitute a permissible construction of the Labor Statute." —— F.2d at ——. (slip op. at 13).

duct of collective bargaining, the question then becomes whether disclosure of those names and addresses is, in the words of the FLRS, "prohibited by law." 5 U.S.C. § 7114(b)(4). Like the question of whether the employees' names and addresses are "necessary," at one time there was a broad consensus on the part of the FLRA and the federal courts that disclosure of those names and addresses was *not* prohibited by law.

The agencies have contended, over the life of this dispute, that disclosure of their employees' names and home addresses is "prohibited by law"—in particular, that disclosure is prohibited by the Privacy Act, 5 U.S.C. § 552a. In general, the Privacy Act, 5 U.S.C. § 552a, prohibits the disclosure of personal information about federal employees without their consent. 5 U.S.C. § 552a(b). The Privacy Act includes several exceptions, however, and it was well settled that one of these exceptions provided for the disclosure of the employees' names and addresses. Section 552a(b)(2) of the Privacy Act [2] states that the Privacy Act does not bar disclosures of information "required under section 552 of this title"—a reference to the Freedom of Information Act, 5 U.S.C. § 552 ('FOIA"). As noted, at one time every court that considered the question agreed that the FOIA did not prohibit disclosure of the employees' names and addresses.

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[2] The Privacy Act provides that

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be required under section 552 of this title . . .

5 U.S.C. 552a(b)(2).

Generally speaking, the FOIA, with certain enumerated exceptions, "embodies a general philosophy of full agency disclosure." *Halloran v. Veterans' Administration*, 874 F.2d 315, 318 (5th Cir. 1989) (quoting *Department of the Air Force v. Rose*, 425 U.S. 352, 360 (1976)). One of the exceptions to the FOIA's directive of full disclosure encompasses "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 522(b)(6). Determining whether disclosure of some piece of information would constitute a "clearly unwarranted invasion of personal privacy," and would therefore be exempt from disclosure under the FOIA, requires balancing the specific privacy interests implicated by the information against the particular public interests that may be served—or disserved—by disclosure of the information. *Halloran*, 874 F.2d at 319. This Court has noted that "Congress contemplated that in applying these exemptions, courts would reconcile these competing interests by balancing all while ignoring none." *Id.* To this end the Congress sought to provide a "workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure." *Id.*

Although the Fifth Circuit did not address the issue, the courts of appeals that weighed the private and public interests involved in disclosure of employees' names and addresses to collective bargaining representatives uniformly held that the balance tipped in favor of the public interests in collective bargaining, and therefore in favor of disclosure. *See United States Dep't of the Navy, Philadelphia Naval Ship-*

yard v. FLRA, 840 F.2d 1131, 1137 (3d Cir.), *cert. denied*, 109 S. Ct. 632 (1988); *United States Dep't of the Air Force, Scott A.F.B. v. FLRA*, 838 F.2d 229, 232-33 (7th Cir.), *cert. denied*, 109 S. Ct. 632 (1988); *United States Dep't of Agriculture v. FLRA*, 836 F.2d 1139, 1143 (8th Cir. 1988), *vacated and remanded*, 109 S. Ct. 831 (1989); *United States Dep't of Health and Human Servs., Social Security Administration v. FLRA*, 833 F.2d 1129, 1135 (4th Cir. 1987); *American Federation of Government Employees, Local 1760 v. FLRA*, 786 F.2d 554, 556-57 (2d Cir. 1986).

Several considerations produced this consensus. Initially, the balancing itself does not present a particularly close question. On the one side of the scales is the weighty public interest in labor organizations and collective bargaining, an interest expressly identified and protected by Congress in the FLRS. Indeed, the Supreme Court has recognized that "[i]n passing the [FLRS] Congress unquestionably intended to strengthen the position of federal unions and to make the collective-bargaining process a more effective instrument of the public interest." *Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 107, 104 S. Ct. 439, 449 (1983). On the other side of the scales, on the other hand, is a considerably lighter interest in privacy. While all of the courts of appeals agreed that employees had at least some legitimate interest in keeping private their names and home addresses, those courts consistently concluded that disclosure of that information would have only a modest or marginal effect on employees' privacy. *Dep't of the Navy, Philadelphia Naval Shipyard*, 840 F.2d at 1136 ("the invasion of privacy effected by such disclosure [of names and addresses] is not as

serious as it would be by the disclosure of more personal information"); *Dep't of the Air Force, Scott A.F.B.*, 838 F.2d at 232 ("Both the secrecy and the seclusion components of privacy . . . are minuscule here."); *Dep't of Agriculture*, 836 F.2d at 1143 (average employee has only modest privacy interest in his home address); *AFGE, Local 1760*, 786 F.2d at 556 ("the privacy of the average employee in his address is not particularly compelling").

About the most significant intrusion into employees' privacy that could be identified by these courts—and by the agencies in this case—would be a possible increase in mail solicitations. As Judge Easterbrook has noted, however,

> It is hard to see how the disclosure of home addresses could be "clearly unwarranted" as a rule. Most home addresses are in the telephone book, freely available to anyone interested. They are widely disseminated on mailing lists. And the mail that comes in response does not substantially impinge on seclusion; the addressee may send it to the circular file.

Dep't of the Air Force, Scott A.F.B., 838 F.2d at 232. To the same effect is the Third Circuit's recognition that "unwanted mailings are an unfortunate fact of our daily existence," but that "our annoyance with them does not rise to a privacy interest that outweighs a statutorily mandated disclosure interest." *FLRA v. Department of the Navy, Navy Ships Parts Control Center*, —— F.2d ——, —— (3d Cir. 1992) (en banc) (slip op. at 29).

In addition, several of the courts of appeals took notice of the fact that employers in the private sector are required to disclose the names and addresses of

their employees to the unions that represent those employees,[3] and there is no apparent reason to apply a different rule here. It is well recognized that the FLRS is modeled on private labor law, *see Bureau of Alcohol, Tobacco & Firearms*, 464 U.S. at 92-93, 104 S. Ct. at 441-42, and that "[p]rivate sector labor-relations case law, although not strictly binding as precedent, generally provides strong guidance in parallel public sector matters." *Dep't of Treasury, Financial Management Service*, 884 F.2d at 1458 (Ginsburg, J., concurring). *See also Dep't of Health & Human Servs., Social Security Administration*, 833 F.2d at 1132, 1132 n.4 (noting that Labor Management Relations Act of 1947, which governs private sector labor relations, shares similar purposes and concerns with the FLRS); *National Treasury Employees Union v. FLRA*, 810 F.2d 295, 299-300 (D.C. Cir. 1987) ("Congress was fully aware of the analogy between the FLRS and the National Labor Relations Act, . . . Congress paid close attention to judicial precedent in private sector labor law when drafting the [FLRS].").

Finally, the Supreme Court has repeatedly cautioned that the exceptions to the FOIA are to be construed narrowly, in favor of full disclosure. *See, e.g.,*

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[3] *See, e.g., NLRB v. Associated Gen'l Contractors*, 633 F.2d 766, 773 (9th Cir. 1980) (disclosure of names and addresses required under 29 U.S.C. § 158(a)(5)'s duty to bargain in good faith); *NLRB v. Pearl Bookbinding Co.*, 517 F.2d 1108, 1113 (1st Cir. 1975) (same); *United Aircraft Corp. v. NLRB*, 434 F.2d 1198, 1204 (2d Cir. 1970) (same), *cert. denied*, 401 U.S. 993, 91 S. Ct. 1232 (1971). *Cf. NLRB v. Wyman-Gordon*, 394 U.S. 759, 767, 89 S. Ct. 1426, 1430 (1969) (employer must provide candidate unions with names and addresses prior to election of bargaining representative).

Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976); *EPA v. Mink*, 410 U.S. 73, 79 (1973). As Chief Justice Rehnquist has explained,

> [t]he system of disclosure established by the FOIA is simple in theory. A federal agency must disclose agency records unless they may be withheld pursuant to one of the nine enumerated exemptions listed in § 552(b). . . . Nonetheless, the mandate of the FOIA calls for broad disclosure of Government records, and for this reason we have consistently stated that FOIA exemptions are to be narrowly construed.

Department of Justice v. Julian, 486 U.S. 1, 8, 108 S. Ct. 1606, 1611 (1988) (citations and internal quotation marks omitted).

In light of all of these considerations, it is not surprising that the FLRA and the courts of appeals all agreed that the FLRS and the FOIA together required the disclosure of employees' names and addresses. The only surprising thing is that this issue—seemingly so well settled—is once again before the courts of appeals, and that the prior consensus has disappeared.[4] The reason for the resurrection of this

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[4] In addition to the case pending before this Court, cases raising the identical issue are pending or have recently been decided in every other Circuit. In its resurrected state the issue has proved far more divisive than it was previously, as it has produced several two to one decisions, as well as a sharp split among the Circuits.

The District of Columbia Circuit was the first to revisit this issue, in *FLRA v. United States Dep't of the Treasury, Financial Management Serv.*, 884 F.2d 1446 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1055 (1990). The panel of the D.C. Circuit that decided this issue actually handed down three

issue, and the emerging split among the Circuits, is the argument of the federal employers that a recent decision of the Supreme Court alters the balance of public and private interests, such that disclosure of employees' names and address is now forbidden.

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opinions. Judge Williams authored the opinion of the Court denying enforcement of the FLRA's order; Judges Sentelle and Ruth Bader Ginsburg each authored concurring opinions.

The First, Second, and Seventh Circuits, following the decision of the D.C. Circuit, have also denied enforcement of the FLRA's order. *FLRA v. United States Department of the Navy*, —— F.2d —— (7th Cir. 1992); *FLRA v. United States Dep't of Veterans Affairs, Veterans Affairs Medical Center*, 958 F.2d 503 (2d Cir. 1992); *FLRA v. United States Dep't of the Navy, Naval Communications Unit Cutler*, 941 F.2d 49 (1st Cir. 1991). The Sixth Circuit has recently issued a summary opinion adopting the reasoning the D.C., First, and Second Circuits, denying enforcement of the FLRA's order. *FLRA v. Dep't of the Navy, Naval Resale Activity*, —— F.2d —— (6th Cir. 1992).

A panel of the Third Circuit initially denied enforcement of the FLRA's order, but that Court decided to rehear the issue en banc, and therefore vacated the panel opinion and withdrew it from the bound volume of the Federal Reporter. *See FLRA v. United States Dep't of the Navy, Navy Ships Parts Control Center*, 944 F.2d 1088 (3d Cir. 1991), *vacated and withdrawn*. Sitting en banc, the Third Circuit reversed the panel, and has now granted the FLRA's petition for enforcement of its order. *FLRA v. United States Dep't of the Navy, Navy Ships Parts Control Center*, —— F.2d —— (3d Cir. 1992).

A panel of the Fourth Circuit also granted enforcement of the FLRA's order, but that Court has also decided to rehear the issue en banc, and has therefore vacated the panel opinion. *FLRA v. United States Dep't of Commerce, NOAA*, 954 F.2d 994 (4th Cir. 1992), *vacated; petition for rehearing granted* (4th Cir. April 22, 1992).

A panel of the Ninth Circuit has also granted enforcement of the FLRA's order. *FLRA v. United States Dep't of the Navy, Navy Resale & Services Support Office*, 958 F.2d 1490 (9th Cir. 1992). A petition for rehearing en banc is currently pending before that Court.

Finally, similar cases are currently pending before the Eighth, Tenth, and Eleventh Circuits.

C. *The Supreme Court's Decision in* Reporters' Committee

In *Department of Justice v. Reporters' Committee for Freedom of the Press*, 109 S. Ct. 1468 (1989), a CBS news correspondent requested the Federal Bureau of Investigation to disclose, pursuant to the Freedom of Information Act, information concerning the criminal records of four members of the Medico family of Philadelphia, a family suspected of ties to organized crime. The FBI complied with the request as to three of the Medicos, each of whom was deceased, but refused the request relating to the fourth Medico. The correspondent brought an action to compel disclosure of the information. The Supreme Court held that the FBI was not required to release the information sought.

The Court reaffirmed that the FOIA's "basic policy [is one] of full agency disclosure unless information is exempted under clearly delineated statutory language." 109 S. Ct. at 1481 (citations and internal quotation marks omitted). This basic policy, the Court explained, "focuses on the citizens' right to be informed about 'what their government is up to.'" *Id.* That is, "the FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed." *Id.* at 1482. "Thus," the Court held,

> whether disclosure of a private document under Exemption 7(C) is warranted must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny, rather than on the particular purpose for which the document is being requested.

Id. at 1481. Because release of criminal history information about the *Medico* family would not open any Government activities to the sharp eye of public scrutiny, release of that information would not serve the type of interest protected by the FOIA. Accordingly, in conducting the balancing required by the FOIA's exemption 7(C), the Medico's privacy interest necessarily outweighed the (non-existent, or at least non-cognizable) disclosure interest.

D. *Balancing Public and Private Interests After* Reporters' Committee

The employer federal agencies now argue, and the dissent agrees, that the Supreme Court's opinion in *Reporters' Committee* alters the balance of public and private interests by eliminating from consideration the public interest—embodied in the FLRS—in collective bargaining. That is, because disclosure of the employees' names and addresses advances the public interest served by the FLRS—protection and promotion of collective bargaining—but does not advance the public interest served by the FOIA—opening agency action to the light of public scrutiny—disclosure of the employees' names and addresses is no longer permissible. The agencies and the dissent have read too much into *Reporters' Committee.*

Initially, of course, it must be acknowledged that if one applies the restrictions announced in *Reporters' Committee*—confining cognizable interests in disclosure to those that open agency action to the light of public scrutiny—then disclosure clearly would be prohibited in this case. Release of the employees' names and addresses would not in any meaningful way open agency action to the light of public scrutiny; the only good reason to disclose those names and addresses is to allow the unions to fulfill their statutory mandate to represent the employees in their bargaining units. Thus, if letting the public know what the government is up to is the only interest that may be considered in favor of disclosure, then the employees' privacy interests, however limited they may be, would nonetheless prevail, and would prohibit disclosure.

However, *Reporters' Committee* does not control the outcome of this case. This is so for two reasons. First, the exemption addressed by *Reporters' Committee* is not the same exemption at issue in this case. *Reporters' Committee* determined the scope of Exemption 7(C) while we construe Exemption 6. While the language in these two exemptions is somewhat similar, the Supreme Court pointed out that there are significant enough differences between them that Exemption 7(C) should be applied more broadly than Exemption 6. *Reporters' Committee*, 109 S. Ct. at 1473. The Court first recognized that while Exemption 6 mandates that the invasion of privacy be "*clearly* unwarranted," Exemption 7(C) requires that the invasion of privacy be merely "unwarranted." The Court then observed that while Exemption 6 applies to disclosures which "would constitute" an invasion of privacy, Exemption 7(C) pertains to disclosures which

"could reasonably be expected to constitute" such an invasion. Because of these differences, the Supreme Court determined that "the standard for evaluating a threatened invasion of privacy interests resulting from the disclosure of records compiled for law-enforcement purposes [under Exemption 7(C)] is somewhat broader than the standard applicable to personnel, medical, and similar files [under Exemption 6]." *Id.* at 1473.

Second, unlike the complainants in *Reporters' Committee*, the unions' disclosure requests in this case do not arise under the FOIA. They are not FOIA requests. Rather, their requests originate from within the FLRS and its Congressionally endorsed framework for protecting and promoting collective bargaining. As a result, *Reporters' Committee* is not controlling because "[t]hat case did not present an occasion to evaluate the [FLRS's] explicit policy favoring collective bargaining as in the public interest, nor the interrelated rights and responsibilities imposed by Congress on an exclusive bargaining representative." *FLRA v. United States Dep't of the Navy, Navy Ships Parts Control Center*, [Nos. 90-3690 & 90-3724, slip op. at 23 (3d Cir. May 26, 1992)]——F.2d ——, —— (3d Cir. 1992) (en banc). In sum, *Reporters' Committee* has absolutely nothing to say about the FLRS, or the situation that arises when disclosure is initially required by some statute other than the FOIA, and the FOIA is employed only secondarily.

Moreover, even the courts that have denied enforcement of the FLRA's orders have recognized that *Reporters' Committee* does not specifically address the issues raised by this case. The rule announced in *Reporters' Committee* that "the identity of the requesting

party has no bearing on the merits of his or her FOIA request,"

> does not necessarily mean that there is no exception to the general rule that the public interest in disclosure under FOIA should be defined exclusively in terms of finding out what the "government is up to." Nothing in the [rule announced by *Reporters' Committee*] suggests that the Court had considered and rejected the relevance of public interest objectives identified by Congress in other disclosure statutes. Moreover, the argument here is not that the *identity* of the requester should alter the disclosure interest, but rather that a congressional (non-FOIA) disclosure mandate might do so.

Dep't of Treasury, Financial Management Service, 884 F.2d at 1453.

The agencies argue, however, that the "plain language" of the FLRS, the Privacy Act, and the FOIA do not allow for any variations from the norms announced in *Reporters' Committee*. They suggest that in restricting its reach to disclosures not otherwise prohibited by law" the FLRS incorporates unmodified the Privacy Act and the FOIA, and the restrictions that apply to FOIA requests. Thus, they contend, it would require an "imaginative reconstruction" of the Privacy Act and the FOIA to be able to introduce collective bargaining values into the balancing process.

The obvious flaw in the agencies' position, of course, is that prior to the decision in *Reporters' Committee*, every court that read the "plain language" of the FLRS, the Privacy Act, and the FOIA

concluded that that language required the disclosure of employees' names and addresses. Whatever else *Reporters' Committee* may have done, it certainly did not amend the language of the FLRS, the Privacy Act, or the FOIA. Thus, it can hardly be said that the "plain language" of those statutes forbids disclosure, or that to bring into consideration the strong public interest in collective bargaining would require any imaginative reconstruction of those statutes. All that is required is the recognition that *Reporters' Committee* does not speak to the situation that arises when the Privacy Act and the FOIA are incorporated into some other statutory scheme which contemplates disclosure of agency records for purposes other than opening agency action to the light of public scrutiny.

Put differently—and wholly apart from the "plainness" of Congress' language—it certainly cannot be the case that Congress intended to have it both ways. That is, it is not plausible to suggest both 1) that Congress intended for names and addresses of employees to be disclosed, and 2) that Congress intended that the names and addresses of employees not be disclosed. It must be one or the other. Previously, as noted above, every court to consider the question had held that the correct position was that disclosure was required, a position which presumably gave effect to Congress' intention, as expressed in the FLRS and its incorporation of the Privacy Act and the FOIA. As with the language of the statutes, whatever else *Reporters' Committee* may have done, it certainly did not alter the Congressional intent embodied in these statutes. Thus, there simply is no merit in the agencies' suggestion that by drafting the FLRS as it did, Congress intended to prohibit disclosure of the names and addresses of employees.

It therefore becomes apparent that the agencies' position is not at all as "plain" as they suggest. They do not argue that the language of the FLRS plainly prohibits disclosure, but rather that the language of the FLRS has somehow *become* "plain" in the light of *Reporters' Committee*—such that it now "plainly" prohibits disclosure—despite the fact that *Reporters' Committee* has nothing at all to say about FLRS. Again, whatever may be urged with respect to the effect of *Reporters' Commitee*, that decision certainly does not mean—indeed, it does not anywhere suggest—that the strong public interest in collective bargaining no longer exists, or that that interest has diminished in value. At most, *Reporters' Committee* forbids the federal courts to take that interest into account when striking the balance between public and private interests.

We do not think, however, that *Reporters' Committee* goes even that far. Rather, we think it clear that the Supreme Court's opinion in *Reporters' Committee* is limited to the situation that arises when disclosure is sought under the FOIA alone, such that only the interests served by the FOIA may be included in the balancing. *Reporters' Committee* simply does not apply when disclosure is commanded by some statute other than the FOIA, a statute which borrows the FOIA's disclosure calculus for another purpose. When, as here, disclosure is sought through the FOIA only because the FOIA has been incorporated into another statute as a mechanism for disclosure of information, it is entirely proper and necessary—if all of Congress' aims are to be achieved—to weigh into the balance the interests recognized by the statute which generates the request for information. *See, e.g., Dep't of the Navy, Navy Resale &*

Services Support Office, 958 F.2d at 1496 ("We doubt that Congress intended that its statement of the public interest in section 7101(a)(1) [of the FLRS] be ignored when examining the public interest element incorporated into section 7114(b)(4) through [the] FOIA.").

Indeed, it would require a particularly convoluted line of reasoning to conclude that the Congress, while 1) expressly recognizing the great public interest in collective bargaining, 2) acting to protect that interest, and 3) providing for disclosure of information according to a "formula which encompasses, balances, and protects all interests," would nevertheless forbid the federal courts to consider the public interest in collective bargaining when balancing the interests favoring and opposing disclosure of information which is conceded to be necessary to the full and proper conduct of collective bargaining.[5]

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[5] Our holding should alleviate one other concern raised by the agencies. As they correctly point out, *Reporters' Committee* held that the identity of the person requesting disclosure under the FOIA makes no difference in the balancing of interests. 109 S. Ct. at 1480. The agencies go on to argue that if they are required to disclose the names and addresses of their employees to the unions involved here, that they will therefore be required to disclose those names and addresses to anyone, including persons who may use the names and addresses to annoy or harass the employees with unwanted mail solicitations or other intrusions into the employees' privacy.

There are three flaws in the agencies' attempt to cause alarm. First, there is no evidence in the record before us that suggests that the agencies' concern is valid or at all serious. Indeed, there is no suggestion at all in the record that in the past, when disclosure was uniformly required, that any great evils flowed from that disclosure. Second, if there are individual employees who have particular or specially heightened concerns about their safety or privacy, they may individually request that their names and home addresses not be released. The Eighth Circuit has previously authorized such a procedure, and it provides a workable procedure for those unusual cases in which an employee's privacy interest is more substantial than the norm. *See, e.g., United States Dep't of Agriculture v. FLRA*, 836 F.2d 1139, 1144 (8th Cir. 1988), *vacated and remanded*, 109 S. Ct. 831 (1989). Similarly, if there is a class of employees who have particular or specially heightened concerns about their safety or privacy, it may be such concerns alter the balancing of public and private interests.

Third, the agencies have undoubtedly overstated the degree to which disclosure of the names and addresses to the unions would require disclosure to other entities. The agencies have confused the *identity* of the person requesting information with the *interest* of the person requesting information. *Reporters' Committee* clearly prohibits distinguishing among requests solely on the basis of the identity of the person making the request. What *Reporters' Committee* does *not* speak to is distinguishing among requesters on the basis of the interests they assert. That is, when disclosure is sought (and ordered) under some statute other than the FOIA, then only someone who can invoke that statute will be entitled to that disclosure. In this case, for instance, the FLRS authorizes disclosure only to labor organizations. A direct mail merchandiser does not occupy the same position, and therefore would not have an equal claim to disclosure. *See Dep't of the Navy, Navy Ships Parts Control Center*, —— F.2d at —— (slip op. at 27); *Dep't of the Navy, Navy Resale & Services Support Office*, 958 F.2d at 1495.

In sum, we hold that *Reporters' Committee* does not require the federal courts, when balancing interests favoring and opposing disclosure, to ignore public interests other than those embodied in the FOIA when the disclosure request originates from some statute other than the FOIA. In such a case, it is proper for the federal court to consider the public

interests embodied in the statute which generates the disclosure request. This approach fully accords not only with the FLRS—with its explicit declaration that it seeks to promote collective bargaining and its direction to unions that they represent non-member employees as faithfully as they do their members—but also fully accords with Congress' aim in establishing the FOIA—to provide a workable formula "which encompasses, balances, and protects all interests." Indeed, we can see no basis on which to hold that although Congress expressly recognized the value to the nation of collective bargaining, it intended to exclude consideration of that value from the decision to disclose or not to disclose to labor unions the names and addresses of public sector employees.[6]

III. Conclusion

For the reasons stated, this Court holds that the public interest in collective bargaining outweighs the employees' private interests in the nondisclosure of their names and addresses. Accordingly, disclosure of the employees' names and addresses would not constitute a clearly unwarranted invasion of privacy, and is not prohibited by the Privacy Act. The FLRA's application for enforcement of its orders compelling disclosure of the names and addresses is GRANTED. The agencies' cross-petitions for review of those orders are DENIED.

ENFORCEMENT GRANTED.

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[6] Because we hold that disclosure of the employees' names and home addresses is proper under the FOIA exception to the Privacy Act, we need not address the parties' arguments concerning disclosure of that information under the "routine use" exception to the Privacy Act, 5 U.S.C. § 552a(b)(3).

EMILIO M. GARZA, Circuit Judge, dissenting:

Because application of *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 109 S. Ct. 1468, 103 L. Ed. 2d. 774 (1989) to this case bars disclosure of the names and addresses of public sector employees, I respectfully dissent.[1]

The majority holds that "*Reporters Committee* does not require the federal courts, when balancing interests favoring and opposing disclosure, to ignore public interests other than those embodied in the FOIA when the disclosure request originates from some other statute other than the FOIA." Slip op. at 26. I disagree.

The language of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (the "FLRS"), provides that a federal agency must furnish to the exclusive representative data "reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects

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[1] *See FLRA v. United States Dep't of the Navy, Navy Exchange*, —— F.2d —— (7th Cir. 1992); *FLRA v. Dep't of the Navy, Naval Resale Activity*, 963 F.2d 124 (6th Cir. 1992) (adopting the reasoning of the First, Second, and D.C. Circuits on this issue); *FLRA v. United States Dep't of Veterans Affairs*, 958 F.2d 503 (2d Cir. 1992); *FLRA v. United States Dep't of the Navy, Naval Communications Unit Cutler*, 941 F.2d 49 (1st Cir. 1991); *FLRA v. United States Dep't of Treasury*, 884 F.2d 1446 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1055, 110 S. Ct. 863, 107 L. Ed. 2d 947 (1990). *But see FLRA v. United States Dep't of the Navy, Navy Ships Parts Control Center*, 966 F.2d 747 (3d Cir. 1992) (en banc); *FLRA v. United States Dep't of the Navy, Navy Resale and Services Support Office*, 958 F.2d 1490 (9th Cir. 1992); *FLRA v. Dep't of Commerce*, 954 F.2d 994 (4th Cir.), *vacated and petition for reh'g granted*, 966 F.2d 134 (4th Cir. 1992).

within the scope of collective bargaining [to the extent not prohibited by law]." 5 U.S.C. § 7114(b)(4)(B). The D.C., First, Second, Sixth, and Seventh Circuits have held that "[t]he broad cross-reference in 5 U.S.C. § 7114(b)(4)—'to the extent not prohibited by law'—picks up the Privacy Act *unmodified*."[2] *Treasury*, 884 F.2d at 1457 (Ginsburg, J., concurring) (emphasis added). "The Privacy Act, [however], excepts from its prohibition against disclosure information that must be made available under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 5 U.S.C. § 552a(b)(2) . . . ." *Veterans Affairs*, 958 F.2d at 505. "Subsection 552(b)(6) ("exemption 6") of the FOIA, [in turn], exempts from disclosure 'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'" *Naval Communications*, 941 F.2d at 52 (quoting 5 U.S.C. § 552(b)(6)).

> Once placed wholly within the FOIA's domain, the union requesting information relevant to collective bargaining stands in no better position than members of the general public. True, unions have a special interest in identifying and communicating with persons in the bargaining unit, an interest initially accommodated by 5 U.S.C. § 7114(b)(4). The bargaining process facilitation interest is ultimately unavailing, however, because it 'falls outside the ambit of the public interest that the FOIA was enacted to serve,' *i.e.*, the interest in advancing 'public understanding of the operation or activities of the government.' *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, —— U.S. ——, 109 S. Ct. 1458, 1482-83, 103 L. Ed. 2d 774 (1989).

Treasury, 884 F.2d at 1457 (Ginsburg, J., concurring).[3]5

Nonetheless, the majority argues that "*Reporters Committee* does not control the outcome of this case" because "*Reporters Committee* determined the scope of Exemption 7(C) while we construe Exemption 6." Slip op. at 20. While I agree that *Reporters Committee* deals with Exemption 7(C) and not Exemp-

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[2] *See Navy Exchange*, —— F.2d at —— ("[I]t seems to us . . . that *the Labor Act itself* by authorizing disclosure 'not prohibited by law' directs us to the Privacy Act, which in turn directs us to FOIA."); *Veterans Affairs*, 958 F.2d at 505 ("Concededly the Act affording disclosure 'to the extent not prohibited by law' implicates the prohibitions contained in the Privacy Act of 1974, 5 U.S.C. § 552a, which generally bars disclosure of personal information, absent consent of the individual affected."); *Naval Comunications*, 941 F.2d at 52 ("There is no dispute but that the employees' addresses sought here fall within the general Privacy Act protection of [5 U.S.C.] § 552a(b).").

[3] *See Navy Exchange*, —— F.2d at —— ("What *Reporters Committee* adds to this analysis is that the *only* public interest cognizable under FOIA is the interest of the citizenry in obtaining information about the activities of its government."); *Veterans Affairs*, 958 F.2d at 512 ("[W]hether FOIA authorizes disclosure requires consideration—once a privacy interest is implicated—of only those policy goals and values it is designed to foster. Nowhere in the [FLRS] does its language indicate that disclosure calculus required by FOIA should be modified."); *Naval Communications*, 941 F.2d at 54 ("We agree with the D.C. Circuit that, in light of *Reporters Committee*, disclosure of the addresses to the unions is prohibited by the Privacy Act, as it [does not come] within the FOIA . . . .").

tion (6), I disagree that *Reporters Committee* determines *only* the scope of Exemption 7(C). The difference between Exemption 6 and 7(C) goes *only* to the degree of personal privacy needed to outweigh the public interest; the public interest factor remains the same under both exemptions.

> Although the context in *Reporters Committee* was the special privacy exemption for law enforcement records, exemption 7(C), we see no reason why the *character* of the disclosure interest should be different under exemption 6. While exemption 6 precludes only "a *clearly* unwarranted invasion of personal privacy" (emphasis added), that difference between it and exemption 7(C) goes only to the *weight* of the privacy interest needed to outweigh disclosure.[4]

Treasury, 884 F.2d at 1451-52; *see Reporters Committee*, 489 U.S. at 767, 109 S. Ct. at 1479 ("Although the opinion dealt with Exemption 6's exception for 'personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,' and our opinion today deals with Exemption 7(C), much of our discussion in *Rose* is applicable here.").[5] "What

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[4] *See infra* note 6.

[5] *See also United States Dep't of State v. Ray*, —— U.S. ——, 112 S. Ct. 541, 549, 116 L. Ed. 2d 526 (1991) (Holding in Exemption (6) case that "[a]s we have repeatedly recognized, FOIA's 'basic policy of "full agency disclosure unless information is exempted under clearly delineated statutory language,' . . . focuses on the citizens' rights to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose.'" (*quoting*

Reporters Committee adds to this analysis is that the *only* public interest cognizable under FOIA is the interest of the citizenry in obtaining information about

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Department of Justice v. Reporters Committee, 489 U.S. at 773, S. Ct. at 1481 (quoting *Department of Air Force v. Rose*, 425 U.S. at 360-61, 96 S. Ct. at 1598-99))); *Navy Exchange*, —— F.2d at —— n.2 ("Although *Reporters Committee* involved FOIA Exemption 7, its definition of the public interest in disclosure in FOIA cases in binding on us here, even though this dispute arises under FOIA Exemption 6."); *Navy Resale*, 958 F.2d at 1493 n.2 (noting that *Reporters Committee* was an Exemption 7(C) case, but explaining that "*Reporters Committee* relied on the leading Exemption 6 case, *Department of Air Force v. Rose*, 425 U.S. 352, 96 S. Ct. 1592, 48 L. Ed. 2d 11 (1976)"); *Veterans Affairs*, 958 F.2d at 508 ("We do not regard such statements as "in conflict with the Supreme Court's teaching in *Rose* [Exemption (6) case] and *Reporters Committee* [Exemption 7(C) case] that whether disclosure of a document is permitted under the FOIA, despite intrusions on privacy interests, is to be assessed solely in terms of 'the nature of the requested document and its relationship to the 'basic purpose of the FOIA to open agency action to the light of public scrutiny.'" (*quoting Reporters Committee*, 489 U.S. at 772, 109 S. Ct. at 1481 (*quoting Rose*, 425 U.S. at 372, 96 S. Ct. at 1604))); *Navy Ships*, 966 F.2d at 754-55 ("The Court [in *Reporters Committee*] also relied upon an Exemption 6 case, *United States Dep't of the Air Force v. Rose*, 425 U.S. 352, 96 S. Ct. 1592, 48 L. Ed. 2d 11 (1976), to analyze the privacy interests in a rap sheet."); *Naval Communications Unit*, 941 F.2d at 56 ("The Supreme Court noted in *Reporters Committee* that the privacy language is broader under exemption 7(C) than under exemption 6. Nevertheless, apart from the degree of privacy protection, the Supreme Court clearly stated that the public interest in disclosure does not turn on the purposes for which the request was made or on the identity of the party requesting the information, but rather . . . [on] 'open[ing] agency action to the light of public scrutiny.'" (citation omitted) (*quoting Reporters Committee*, 489 U.S. at 772-73, 109 S. Ct. at 1481)).

the activities of its government." *Navy Exchange*, —— F.2d at ——.

The majority—like the Third Circuit, sitting en banc, and panels of the Fourth and Ninth Circuits—also attempts to distinguish *Reporters Committee* by pointing out that "'[t]hat case did not present an occasion to evaluate the [FLRS's] explicit policy favoring collective bargaining as in the public interest, nor the interrelated rights and responsibilities imposed by Congress on an exclusive bargaining representative.'"[6] *See* slip op. at 21 (alterations in original) (quoting *Navy Ships*, 966 F.2d at 757).

Although I agree that *Reporters Committee* did not consider "the [FLRS's] explicit policy favoring collective bargaining as in the public interest," slip op. at 21, the language of section 7114(b)(4) and *Reporters Committee* makes this policy irrelevant. First, "[t]he broad cross-reference in 5 U.S.C. § 7114(b)(4)—'to the extent not prohibited by law'—picks up the Privacy Act unmodified." *Treasury*, 884 F.2d at 1457 (Ginsburg, Jr., concurring). "Nowhere in the [FLRS] does its language indicate that the disclosure calculus required by FOIA should be modified." *Veterans Affairs*, 958 F.2d at 512.

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[6] *See Navy Resale*, 958 F.2d at 1496 ("'Nothing in [*Reporters Committee*] suggests that the Court had considered and rejected the relevance of public interest objectives identified by Congress in other disclosure statutes.'" (alteration in original) (*quoting Treasury*, 884 F.2d at 1453)); *Commerce*, 954 F.2d at 997 ("[In *Reporters Committee*], the Supreme Court considered a request for information made *solely* under the FOIA. No other federal statute was directly involved. Here, the Union requested the information under section 7114(b)(4)(B) of the FS Labor Statute, which directs the litigants to the Privacy Act which, in turn, directs them to the FOIA. We find this distinction critical . . . .").

Second, *Reporters Committee*—in discussing "what [public interest] factors might *warrant* an invasion of [personal privacy]," *Reporters Committee*, 489 U.S. at 771, 109 S. Ct. at 1480—excluded from this consideration not only the *identity* of the requesting party, *see* slip op. at 21-22, 25 n.5, but also its *purpose*. *See Reporters Committee*, 489 U.S. at 711, 109 S. Ct. at 1480.

> Our previous decisions establish that whether an invasion of privacy is *warranted* cannot turn on the *purposes* for which the request for information is made. Except for cases in which the objection to disclosure is based on a claim of privilege and the person requesting disclosure is the party protected by the privilege, the identity of the requesting party has no bearing on the merits of his or her FOIA request. Thus, although the subject of a presentence report can waive a privilege that might defeat a third party's access to that report, and although the FBI's policy of granting the subject of a rap sheet access to his own criminal history is consistent with its policy of denying access to all other members of the general public, the right of two press respondents in this case are no different from those that might be asserted by any other third party, such as a neighbor or prospective employer.

Id. (citations omitted) (emphasis added). The public interest standard must be measured by "the core purpose of the FOIA as 'contribut[ing] significantly to the public understanding of *the operations or activities of the government.*'" *Id.* at 775, 109 S. Ct. at 1483 (alteration in original).

Because *Reporters Committee* controls "what [public interest] factors might warrant an invasion of [personal privacy]" under FOIA, it also controls disclosure of information requested under the FLRS.[7] Accordingly, I would deny the FLRA's application for enforcement of its orders and grant the agencies' cross-petitions for review.

[7] The majority concedes, "if [under a *Reporters Committee* analysis] letting the public know what the government is up to is the only interest that may be considered in favor of disclosure, then the employees' privacy interests, however limited they may be, would nonetheless prevail, and would prohibit disclosure." Slip op. at 20.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-4722 & 90-4775

FEDERAL LABOR RELATIONS AUTHORITY,
PETITIONER-CROSS-RESPONDENT,

versus

U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF THE NAVY, NAVY CBC EXCHANGE, CONSTRUCTION BATTALION CENTER, GULFPORT, MISSISSIPPI,
RESPONDENTS-CROSS-PETITIONERS

Applications for Enforcement of an Order of the
Federal Labor Relations Authority

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

[Filed December 7, 1992]

Before KING, JOHNSON and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of

Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Sam D. Johnson
United States Circuit Judge
12-2-92

APPENDIX C

37 FLRA No. 49

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

U.S. DEPARTMENT OF THE NAVY
WASHINGTON, D.C.
AND
NAVY CBC EXCHANGE
CONSTRUCTION BATTALION CENTER
GULFPORT, MISSISSIPPI
(RESPONDENTS)

and

UNITED FOOD AND COMMERCIAL WORKERS UNION
LOCAL 1657
(CHARGING PARTY)

4-CA-90054

DECISION AND ORDER

September 27, 1990

Before Chairman McKee and Members Talkin and Armendariz.

I. *Statement of the Case*

The Administrative Law Judge issued the attached decision in the above-entitled proceeding, finding that the U.S. Department of Defense, U.S. Department of

the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi (Respondent Activity) had engaged in the unfair labor practices alleged in the complaint by refusing to furnish, upon request of the Union, the names and home addresses of bargaining unit employees. The Judge also found that the U.S. Department of Defense, U.S. Department of the Navy, Washington, D.C. (Respondent Agency) did not instruct the Respondent Activity to refuse the Union's request for names and home addresses. Therefore, the Judge recommended that the complaint against the Respondent Agency be dismissed.

The Judge granted the General Counsel's motion for summary judgment against Respondent Activity and recommended that it be ordered to take appropriate remedial action. The Respondent Activity filed exceptions to the Judge's Decision and the General Counsel filed an opposition to the exceptions.

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), we have reviewed the rulings of the Judge and find that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Judge's Decision and the entire record, we adopt the Judge's findings, conclusions and recommended Order for the reasons fully set forth in *U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 37 FLRA No. 39 (1990).

II. *Order*

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute,

the U.S. Department of Defense, U.S. Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representatives of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding Officer of the U.S. Department of Defense, U.S. Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi and shall be posted in conspicuous places, including all bulletin boards and other places where notices to employees

are customarily posted, and shall be maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

The allegations in the complaint against the U.S. Department of Defense, U.S. Department of the Navy, Washington, D.C. are dismissed.

NOTICE TO ALL EMPLOYEES
AS ORDERED BY THE FEDERAL LABOR
RELATIONS AUTHORITY AND TO
EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT
RELATIONS STATUTE WE NOTIFY OUR
EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents.

_____
(Activity)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Region IV, Federal Labor Relations Authority, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, Georgia 30367 and whose telephone number is: (404) 347-2324.

APPENDIX D

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGE
WASHINGTON, D.C. 20424

Case No. 4-CA-90054

DEPARTMENT OF DEFENSE, DEPARTMENT OF THE NAVY, WASHINGTON, D.C., AND DEPARTMENT OF DEFENSE, DEPARTMENT OF THE NAVY, NAVY CBC EXCHANGE, CONSTRUCTION BATTALION CENTER, GULFPORT, MISSISSIPPI, RESPONDENTS

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1657 AFL-CIO, CLC, BIRMINGHAM, ALABAMA, CHARGING PARTY

ROBERT R. GIACALONE, Esquire, For the Respondent

LINDA J. NORWOOD, Esquire, For the General Counsel

Before: JESSE ETELSON, Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges, in substance, that Respondents violated section 7116 —

(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to provide the Charging Party (Union), the agent of the exclusive representative of certain of Respondents' employees, with the names and home addresses of bargaining unit employees represented by the Union.

On or about March 8, 1989, Counsel for the General Counsel moved for summary judgment against Respondent Navy CSC Exchange. The Regional Director transferred the motion to the Chief Administrative Law Judge, pursuant to section 2423.22 (b)(1) of the Regulations, and it was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Regulations. Respondents served their opposition on March 13, 1989, requesting that judgment be granted in their favor.

Based upon the entire record, and it appearing that there are no genuine issues of material fact and that the General Counsel is entitled to summary judgment as a matter of law, I make the following findings of fact, conclusions of law, and recommendation.

Findings of Fact

The United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, (the Union) is the exclusive representative of certain employees at Respondents' Gulfport Navy CBC Exchange, Gulfport, Mississippi. On or about August 11, 1988, the Union requested that an agent of Respondents provide it with the names and home addresses of all bargaining unit employees represented by the Union. On or about October 19, 1988,

and at all times since, Respondent Exchange has refused to furnish the Union with the requested information.

Discussion, Conclusions, and Recommendations

The names and mailing addresses of bargaining unit employees are normally maintained by Respondents in the regular course of business, are reasonably available, are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and do not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.[1]

The decision in this case is controlled by the Authority's decision in *Farmers Home Administration Finance Office, St. Louis, Missouri*, 23 FLRA 788 (1986) (*Farmers Home*), *enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA*, 836 F.2d 1139 (8th Cir. 1988). In *Farmers Home* the Authority held that "the statutory requirement concerning sufficiency of a request under section 7114(b)(4) is satisfied for requests such as that involved here [for names and addresses] when a general written request for the information is made. A precise explication of the reasons for the request involved here is not necessary." The Authority also emphasized that

[1] While the Respondents' answer denies all of these elements with respect to the requested data, it is clear from its opposition papers that it contests only the "necessary" element and contends that a material factual issue exists as to the Union's alternative means of communicating with unit employees.

names and addresses of bargaining unit employees should be provided whether or not alternative means of communication are available. The Authority stated, "We will not review the adequacy of alternative methods of communication on a case-by-case basis."

In *Farmers Home*, the Authority gave full consideration to the many issues raised by requiring disclosure of names and addresses of federal employees. The Authority analyzed the interplay of the Statute, the Privacy Act, and the Freedom of Information Act, and concluded that, "the release of names and home addresses to the Union is not prohibited by law, is necessary for the Union to fulfill its duties under the Statute, and meets the other requirements of section 7114(b)(4)." The Authority's decision in *Farmers Home* analyzed the two exceptions to the Privacy Act's bar to disclosure of personal information pertinent to the release of employees' names and home addresses: exception (b)(2), concerning the Freedom of Information Act, and exception (b)(3), relating to "routine use" of information. The Authority found that both exceptions to the Privacy Act's bar applied so as to authorize release of the information under the Privacy Act.

To the extent that the Eighth Circuit enforced the Authority's order, there is, needless to say, no point in my entertaining arguments to the contrary.[2] To

[2] On January 13, 1989, the Supreme Court vacated the judgment of the Eighth Circuit and remanded the case to that court for further consideration in light of the respondent agency's recent "routine use" regulations. 57 U.S.L.W. 3470, 130 LRRM 2272. That disposition does not affect the controlling weight, before me, of the Authority's decision in *Farmers Home*.

the extent that the Eighth Circuit limited enforcement of the Authority's order—by requiring disclosure of the names and addresses of only those employees who do not request their employers to keep the information confidential—the Authority has now spoken in response to that limitation. The Authority has rejected an employing activity's request that it adopt the Eighth Circuit's limitation, and has ordered the activity to provide the information as requested. *Department of the Navy, Naval Plant Representative Office, Sikorsky Aircraft (Stratford, CT)*, 32 FLRA 675 (1988).

Consistent with the Authority's decision in *Farmers Home*, Respondents were required to furnish the Union with the names and addresses of the employees in the bargaining unit it represents. Their refusal to do so violated section 7116(a)(1), (5) and (8) of the Statute. *See also United States Department of the Navy and Philadelphia Naval Shipyard v. FLRA*, 840 F.2d 1131 (3rd Cir. 1988), *enforcing Philadelphia Naval Shipyard*, 24 FLRA 37 (1986); *U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA*, 838 F.2d 229 (7th Cir. 1988), *affirming Department of the Air Force, Scott Air Force Base, Illinois*, 24 FLRA 226 (1986); *Department of Health and Human Services, Social Security Administration v. FLRA*, 833 F.2d 1129 (4th Cir. 1987), *affirming Department of Health and Human Services, Social Security Administration*, 24 FLRA 543 (1986); *Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, Dallas, Texas*, 31 FLRA 740 (1988).

As the motion for summary judgment is directed only against Respondent Exchange, and as the motion papers accept the Respondents' denial that Respond-

ent Exchange acted upon orders or instructions from Respondent Navy and also note that the collective bargaining relationship is at the local (Exchange) level, I shall recommend that the allegations in the complaint against Respondent Navy be dismissed. *See U.S. Department of Defense, U.S. Department of the Navy, Washington, D.C.*, 28 FLRA 859 (1987).

Based on the foregoing, the General Counsel's motion for summary judgment against Respondent Exchange is granted. It is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Labor-Management Relations Statute, the Department of Defense, Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC,

Birmingham, Alabama, with the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of the Department of Defense, Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

IT IS FURTHER ORDERED that the portion of the Complaint alleging unfair labor practices by Respondent Department of Defense, Department of the Navy, Washington, D.C., is dismissed.

Issued, Washington, D.C., April 26, 1989.

/s/ Jesse Etelson
JESSE ETELSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY
AND IN ORDER TO EFFECTUATE THE
POLICIES OF CHAPTER 71 OF TITLE 5 OF THE
UNITED STATES CODE
FEDERAL SERVICE LABOR-MANAGEMENT
RELATIONS STATUTE
WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, with the names and home addresses of all employees in the bargaining unit it represents.

_____
(Activity)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.

APPENDIX E

37 FLRA No. 78

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

U.S. DEPARTMENT OF DEFENSE
ARMY AND AIR FORCE EXCHANGE SERVICE
DALLAS, TEXAS
(RESPONDENT)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1345
(CHARGING PARTY)

7-CA-90172

DECISION AND ORDER

October 11, 1990

Before Chairman McKee and Members Talkin and Armendariz.

I. *Statement of the Case*

The Administrative Law Judge issued the attached decision in the above-entitled proceeding, finding that the Respondent had engaged in the unfair labor practices alleged in the complaint by refusing to furnish, upon request of the Charging Party, the names and home addresses of bargaining unit employees. The Judge granted the General Counsel's motion for summary judgment and recommended that Respondent be ordered to take appropriate remedial action. The Respondent filed an exception to the Judge's Decision. The General Counsel filed an opposition to the Respondent's exception.

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), we have reviewed the rulings of the Judge and find that no prejudicial error was committed. The rulings are hereby affirmed. Upon consideration of the Judge's Decision, the exception, and the entire record, we adopt the Judge's findings, conclusions, and recommended Order, as modified,* for the reasons fully set forth in *U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 37 FLRA No. 39 (1990).

The Union's request for the names and home addresses of unit employees satisfies the requirements of section 7114(b)(4). Therefore, the Respondent was required to provide the data requested by the Union and its refusal to do so violated section 7116 (a)(1), (5) and (8) of the Statute.

II. *Order*

Pursuant to section 2423.29 of the Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute,

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* In his recommended Order the Judge directed that the Notice be signed by "a senior official." Judge's Decision at 3. The Judge's recommended Order has been modified to require that the Notice be signed by an official designated by the Authority rather than one determined by the Respondent. *See Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 35 FLRA 1230, 1231-32 (1990).

the Army and Air Force Exchange Service, Dallas, Texas, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 1345, the agent of the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, AFL-CIO, Local 1345, the agent of the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

(b) Post at all facilities where bargaining unit employees represented by the American Federation of Government Employees, AFL-CIO, Local 1345, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director of the Army and Air Force Exchange Service, Dallas, Texas and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other

places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region VII, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

NOTICE TO ALL EMPLOYEES
AS ORDERED BY THE
FEDERAL LABOR RELATIONS AUTHORITY
AND TO EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT
RELATIONS STATUTE
WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 1345, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the American Federation of Government Employees, AFL-CIO, Local 1345, the names and home addresses of all employees in the bargaining unit at its Lowry Air Force Base, Colorado, facility.

_____
(Agency)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Region VII, Federal Labor Relations Authority, whose address is: 535 16th Street, Suite 310, Denver, Colorado 80202 and whose telephone number is: (303) 844-5224.

APPENDIX F

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

Case No. 7-CA-90172

ARMY AND AIR FORCE EXCHANGE SERVICE,
DALLAS, TEXAS, RESPONDENT

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1345, CHARGING PARTY

BRUCE CONANT, ESQ., For the General Counsel

JANIS E. BALDIN, ESQ., For the Respondent

Before: JESSE ETELSON, Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges, in substance, that Respondent violated section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, (the Statute), by refusing to provide the Charging Party (Union), the agent of the exclusive representative of certain of

Respondent's employees, with the names and home addresses of bargaining unit employees represented by the Union.

On or about April 5, 1989, Counsel for the General Counsel moved for summary judgment against Respondent. The Regional Director transferred the motion to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the Regulations, and it was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Regulations. Respondent served its opposition on April 26, 1989, with a cross-motion for summary judgment in its favor, and Counsel for the General Counsel filed an opposition to the Respondent's cross-motion.

Based upon the entire record, and it appearing that there are no genuine issues of material fact and that the General Counsel is entitled to summary judgment as a matter of law, I make the following findings of fact, conclusions of law, and recommendation.

Findings of Fact

American Federation of Government Employees, AFL-CIO, Local 1345 (the Union) is the agent for the exclusive representative of certain employees at Respondent's facility at Lowry Air Force Base, Colorado. On or about October 13, 1988, the Union requested that the Respondent provide it with the names and home addresses of all bargaining unit employees working at Respondent's Lowry Air Force Base, Colorado, facility. On or about November 3, 1988, and at all times since, the Respondent has refused to furnish the Union with the requested information.

Discussion, Conclusions, and Recommendations

The names and home addresses of bargaining unit employees are normally maintained by Respondent in the regular course of business, are reasonably available, are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and do not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining. Moreover, the release of the names and addresses is not prohibited by law. *Departments of the Army and Air Force, Army and Air Force Exchange Service Headquarters, Dallas, Texas, and Army and Air Force Exchange Service, McClellan Air Force Base, California,* 26 FLRA 691 (1987); *United States Department of Defense, Departments of the Army and Air Force Exchange Service, Dallas, Texas,* 32 FLRA 968 (1988). Both of the cited cases are controlling and establish that, under existing Authority precedent, Respondent violated section 7116 (a)(1), (5), and (8) of the Statute. I therefore recommend that the Authority issue the following order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Army and Air Force Exchange Service, Dallas, Texas, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 1345, the agent of the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, AFL-CIO, Local 1345, the agent of the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

(b) Post at all facilities where bargaining unit employees represented by the American Federation of Government Employees, AFL-CIO, Local 1345, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by a senior official of the Army and Air Force Exchange Service, Dallas, Texas and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region 7, Federal Labor Relations Author-

ity, 535 - 16th Street, Suite 318, Denver, CO 80202 in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., August 28, 1989

/s/ Jesse Etelson
JESSE ETELSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES
AS ORDERED BY THE FEDERAL LABOR
RELATIONS AUTHORITY AND TO
EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT
RELATIONS STATUTE
WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 1345, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the American Federation of Government Employees, AFL-CIO, Local 1345, the names and home addresses of all employees in the bargaining unit working at its Lowry Air Force Base, Colorado, facility.

_____
(Activity)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region 7, whose address is: 535 - 16th Street, Suite 310, Denver, CO 80202, and whose telephone number is: (303) 844-5224.

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